

REMARKS/ARGUMENTS

The specification has been amended to recite the Statement of the Invention on page 3 in a form that better corresponds to U.S. practice. No new matter has been added by the amendment.

Claims 1-21 and 23 are pending in the present application. Claims 1-10 and 12-20 were amended, claim 22 was canceled, and claim 23 was added. Applicants have carefully considered the cited art and the Examiner's comments and believe the claims currently in the case patentably distinguish over the cited art. Reconsideration of the claims is, accordingly, respectfully requested in view of the above amendments and the following comments.

I. 35 U.S.C. § 101

The Examiner has rejected claim 22 under 35 U.S.C. § 101 as being directed towards non-statutory subject matter.

In rejecting the claim, the Examiner states:

Claim 22 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 22 appears drawn to computer software which is nonstatutory subject matter. The claims lack an appropriate computer readable storage medium to define a structural and functional interrelationship between a computer program and other elements of a computer which permit the functionality of the computer program to be realized.

Office Action dated June 27, 2007, page 2.

In response, claim 22 has been canceled and new claim 23 has been added. Claim 23 recites a computer program product that comprises “a computer readable data carrier carrying a computer readable program element.” This terminology is supported in the specification, for example, at page 18, lines 9-15, and fully satisfies the requirements of 35 U.S.C. § 101.

Therefore, the rejection of claim 21 under 35 U.S.C. § 101 has been overcome.

II. 35 U.S.C. § 102, Anticipation: claims 1-5, 7, 10-15, 17, 20, 21 and 22

The Examiner has rejected claims 1-5, 7, 10-15, 17, 20, 21 and 22 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,006,269 to Phaál, (hereinafter “Phaál”). This rejection is respectfully traversed.

In rejecting the claims, the Examiner states:

As concerns claims 1, an arrangement for controlling communication between a client application executing on a client unit and an impermanently connected server in a network, comprising: at least one client proxy (web

browser), operable when the client unit is not connected for communication with the server, for receiving information from a client application that requires a response from the server for the application to continue operation (column 4, lines 53-57), for storing (column 4, line 55) said information, for generating a substitute server response and sending the substitute response to the client application to allow the client application to continue operation (figure 4a; 66,65); and means for relaying (network connection hardware, NIC, on client) the information to the server when a communications link there between is established.

As concerns claims 2, 12 and 22 as best understood, an arrangement for impermanent connectivity between a client unit and a server in a network, the arrangement comprising: at the client unit, a client proxy (web browser) for receiving information, for storing (column 6, line 55) said information, and for relaying (network connection hardware, NIC, on client) said information between the client unit and the server when a connectivity link therebetween is established.

Office Action dated June 27, 2007, pages 2-3.

Claim 2, as amended herein, is as follows:

2. An arrangement for impermanent connectivity between a client unit and a server in a network, the arrangement comprising:
at the client unit, a client proxy for receiving information to be sent to the server and for which a server response is to be received from the server, for storing said information, and for sending a substitute response for the server response; and
relaying means for relaying said information from the client proxy at the client unit to the server responsive to a connectivity link between the client unit and the server being established.

A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). All limitations of the claimed invention must be considered when determining patentability. *In re Lowry*, 32 F.3d 1579, 1582, 32 U.S.P.Q.2d 1031, 1034 (Fed. Cir. 1994). Anticipation focuses on whether a claim reads on the product or process a prior art reference discloses, not on what the reference broadly teaches. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 218 U.S.P.Q. 781 (Fed. Cir. 1983). In the present case, each and every feature of the presently claimed invention is not identically shown in Phaal arranged as they are in the claims, and Phaal does not anticipate the claims. With respect to claim 2, in particular, Phaal does not disclose or suggest “at the client unit, a client proxy for receiving information to be sent to the server and for which a server response is to be received from the server, for storing said information, and for sending a substitute response for the server response”, and also does not disclose or suggest “relaying means for relaying said

information from the client proxy at the client unit to the server responsive to a connectivity link between the client unit and the server being established.”

Phaal is directed to an admission control system for controlling access to a web site. In Phaal, the admission control system is resident on a server and determines whether a web site requested by a client is available. If the web site is not available, the admission control system sends a signal to the client advising when the requested web site will be available.

The admission control system in Phaal is described in column 4, line 36-column 5, line 6 reproduced below for the convenience of the Examiner:

The preferred embodiment is an admission control system resident on a server, a client computer (typically a personal computer), or both. The admission control system may be implemented in firmware, hardware, or software, but most typically will be implemented in software such that it can be optionally implemented on a server which has processing resources which are sometimes strained. The preferred application of the admission control system is to systems involving access and processing on the world-wide web (the “web”).

In accordance with the principles of the present invention, the preferred admission control system normally admits messages to a server, but if processing resources of the server are strained, the admission control system defers messages corresponding to new sessions to a later time when it is thought that the server can guarantee processing of the deferred message as a priority message and any corresponding session. The admission control system formats a response to the client, to inform the client's user that access has been deferred, and accords the client a means of later obtaining access on a priority basis if the client contacts the server again at the proper time.

On the client side of the admission control system, the client's user is preferably afforded a means of automatically contacting the server again, once the appointed time has been reached. In the preferred embodiment, the admission control system operates principally on the server and formats a special web page which is downloaded to the client as part of a deferral message. This special web page provides a countdown function, visible to the client's user, which indicates time until re-submission in minutes or seconds; if the client closes the browser or uses it to contact a different web page, the web page is disabled and the client will not automatically contact the server (in the preferred embodiment). This implementation is preferred, because it can be implemented entirely in software on the server side (including formation of the special web page which is downloaded to the client).

Initially, Phaal does not disclose or suggest a client proxy at a client unit “for receiving information to be sent to the server and for which a server response is to be received from the server, for storing said information, and for sending a substitute response for the server response.” Instead, in Phaal, as clearly described in the above recitation, the admission control system is resident on the server. Further, Phaal does not disclose a client proxy at a client unit that sends “a substitute response for the server response”. In Phaal, the admission control system resident on the server sends a response to the client advising that access has been deferred. This response is not from a client proxy at the client unit and is not a substitute response for the server response.

Thus, Phaal does not disclose “at the client unit, a client proxy for receiving information to be sent to the server and for which a server response is to be received from the server, for storing said information, and for sending a substitute response for the server response”, and does not anticipate claim 2 for at least this reason.

In addition, Phaal does not disclose or suggest “relaying means for relaying said information from the client proxy at the client unit to the server responsive to a connectivity link between the client unit and the server being established.” Initially, as indicated above, Phaal does not disclose a client proxy at a client unit. Also, in Phaal, as described in the above-reproduced recitation, the admission control system will always receive messages sent from a client; however, it will defer messages sent when the server resources are strained. Thus, in Phaal, a connectivity link between the client and the server is always established. Phaal does not disclose an arrangement for impermanent connectivity between a client unit and a server. Therefore, Phaal also does not disclose “relaying means for relaying said information from the client proxy at the client unit to the server responsive to a connectivity link between the client unit and the server being established”, and does not anticipate claim 2 for this reason as well.

For at least all the above reasons, claim 2 is not anticipated by Phaal and patentably distinguishes over Phaal in its present form.

Independent claim 12 has been amended in a similar manner as claim 2, and new claim 23 has been drafted to correspond to claims 2 and 12. Claims 12 and 23, accordingly, also patentably distinguish over Phaal in their present form. Independent claim 1 has also been amended similar to claim 2 and patentably distinguishes over Phaal for at least the reasons discussed above with respect to claim 2.

Claims 3-5, 7, 10, 11, 13-15, 17, 20 and 21 depend from and further restrict one of claims 2 and 12 and also patentably distinguish over Phaal, at least by virtue of their dependency.

Therefore, the rejection of claims 1-5, 7, 10-15, 17, 20, 21 and 22 under 35 U.S.C. § 102(b) has been overcome.

Furthermore, Phaal does not teach, suggest, or give any incentive to make the needed changes to reach the presently claimed invention. Phaal teaches an admission control system resident on a server that determines whether a web site requested by a client is available, whereas the present invention relates to an arrangement for impermanent connectivity between a client unit and a server in a network that includes a client proxy at the client unit for receiving information to be sent to the server. Absent the Examiner pointing out some teaching or incentive to implement Phaal and its teaching of an admission control system resident on a server that determines whether a web site requested by a client is available, one of ordinary skill in the art would not be led to modify Phaal to reach the present invention when the reference is examined as a whole. Absent some teaching, suggestion, or incentive to modify Phaal in this

manner, the presently claimed invention can be reached only through an improper use of hindsight using the Applicants' disclosure as a template to make the necessary changes to reach the claimed invention.

III. 35 U.S.C. § 103, Obviousness: claims 6, 8, 9, 16, 18 and 19

The Examiner has rejected claims 6, 8, 9, 16, 18 and 19 under 35 U.S.C. § 103(a) as being unpatentable over Phaal as applied above. This rejection is respectfully traversed.

In rejecting the claims, the Examiner states:

Phaal discloses the use of various protocols for communication (column 7, lines 33-41). Phaal does not explicitly disclose POP3 and FTP protocols. However, it would have been an obvious design choice to one of ordinary skill in the art to select the POP3 or FTP protocols and the applicant has not indicated the significance to the patentable operation of the invention.

Office Action dated June 27, 2007, page 4.

Claims 6, 8, 9, 16, 18 and 19 depend from and further restrict one of claims 2 and 12. Phaal does not disclose or suggest subject matter recited in the independent claims as discussed above. Therefore, claims 6, 8, 9, 16, 18 and 19 patentably distinguish over Phaal at least by virtue of their dependency.

Furthermore, many of the claims recite additional subject matter that is not disclosed or suggested by Phaal. For example, claims 9 and 19 recite a specific arrangement and method using the FTP protocol. As recognized by the Examiner, Phaal does not even disclose use of the FTP protocol; and Phaal certainly, does not disclose or in any way suggest the specific arrangement and method recited in claims 9 and 19. Claims 9 and 19, accordingly, patentably distinguish over Phaal in their own right as well as by virtue of their dependency.

Yet further, Applicants respectfully disagree with the Examiner's assertion on page 4 of the Office Action that it would have been obvious to one of ordinary skill in the art to select the POP3 or FTP protocols and that Applicants have not indicated their significance to the patentable operation of the invention. Applicants have explained in the specification, for example, on page 2, lines 11-17, that writers of most user applications, such as POP3 and FTP, assume the existence of a client-server connection at the time the application performs its sending or receiving. Applicants have provided mechanisms that enable such applications to be used in an impermanent connectivity environment, and have described in detail how this may be achieved. Thus, Applicants have indicated the significance of the protocols to the patentability of the present invention, and respectfully submit that it would not be obvious to select POP3 or FTP protocols in connection with the present invention.

Therefore, the rejection of claims 6, 8, 9, 16, 18 and 19 under 35 U.S.C. § 103 has been overcome.

IV. Conclusion

For at least all the above reasons, claims 1-21 and 23 patentably distinguish over Phaal and this application is believed to be in condition for allowance. It is, accordingly, respectfully requested that the Examiner so find and issue a Notice of Allowance in due course.

The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

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Respectfully submitted,

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